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10/673,748	09/29/2003	Daniel T. Garman	203036	1462

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EXAMINER

HUSBAND, SARAH E

ART UNIT

PAPER NUMBER

1746

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/673,748

Applicant(s)

GARMAN ET AL.

Examiner

Sarah E. Husband

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 and 35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments and amendments, see pages 2-4 and the drawings, filed 10/24/2005, with respect to the objections to the specification, abstract and drawings have been fully considered and are persuasive. In light of these changes, the objections of the specification, abstract and drawings have been withdrawn.

The 35 USC 112 rejection of claim 34 is considered moot because the claim has been cancelled.

Applicant's amendments, see the claims, filed 10/3/2005, with respect to the 35 USC 112 rejection of claim 10 have been fully considered and are persuasive. The 112 rejection of claim 10 has been withdrawn.

The filing of the Terminal Disclaimer is also noted with reference to US Patent No. 6,626,195. In view of the Terminal Disclaimer, the rejection under obvious-type double patenting is withdrawn.

Applicant's arguments, see Remarks, pages 14-17, filed 10/3/2005, with respect to the rejection(s) of claim(s) 1-4, 7, 8 and 13-34 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Irwin (US Patent No. 5862561).

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 5-7, 9, 11-19, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Irwin (US Patent No. 5,862,561 as evidenced by US Patent No. 5,193,242 and 4,580,306, hereafter referred to as '561, '242 and '306).

Irwin discloses a waste line cleanout apparatus having a hose with a spray tip and a plurality of water passageways directing high-pressure water (col. 2, ll. 35-45). Irwin also discloses a framework supporting a means for extending and retracting the hose (col. 3, ll. 34-36), a reel aligning the hose concentrically (Fig. 1) and also means for rotating the transport means where the hose and tip are rotated as they extend and retract (see '561 and col. 4-5 of '306). Irwin further discloses storing the hose in coils and using rollers to direct the axial movement of the hose having tension adjustment of the rollers on the hose and also grooves in the rollers (see '306 col. 5-6, esp. col. 6, ll. 17-38). Irwin also discloses the reel having webs and a shroud ('561 Fig. 1, Item 18 and '242 Fig. 1, 2 and 4, Items 14).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 8 and 20-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin in view of the Gardner (Operation Manual 10,000 PSI – “V” Drum) as described in applicant’s specification.

Irwin discloses the apparatus shown above in the 102(b) rejection. Irwin does not specifically disclose an operator control gun or disc brake. Gardner discloses an operator control gun coupled to said framework and having a bore through which said hose is directed (Fig. 1-A) and the control gun includes a plurality of air valves for directing the operation of said transport means and said reel means. The control gun states that it has controls for “rotation” and “extend/retract” and that these are air-powered functions and therefore would have air valves regulating air flow. There are also two air motors directing the movement of the hose (I. Principles of Operation). Gardner discloses the transport means includes a plurality of pinch wheels (with grooves) mounted to contact said hose and control means for directing the reciprocating axial movement of said hose in synchrony with the rotational movement of said hose (I. Principles of Operation). Gardner also describes a brake means (Drawing PNMT7510). Although Gardner describes a drum brake, it would be obvious to one skilled in the art to replace the drum brake with a disc brake which is known to provide better stopping. The Courts have upheld that design choice is obvious, *In re Kuhle* 188 USPQ 7. Gardner also discloses the control gun controlling the rotation of the pinch wheels because it is stated that the gun controls the extension and retraction of the hose thereby including the rotation of the pinch rollers, which move the hose. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Irwin with

Gardner for the benefit of better control of the cleaning apparatus and the area to be cleaned.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin in view of Clotz (US Patent No. 2,267,493).

Irwin discloses the cleaning apparatus disclosed above in the 102(b) rejection. Irwin does not specifically disclose a plurality of annular bands. Clotz discloses the plurality of annular rods (bands) in connection with a reel (Fig. 1, 2, Item 21). At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Irwin with Clotz for the benefit of controlling the reeling of the hose and viewing of the reel.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 9, 12-14, 20, 21, 35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 and 12-20 of copending Application No. 10/673,742. Although the conflicting claims are not identical, they are not patentably distinct from each other because they include many of the same limitations found in the present claims such as the apparatus having water source, hose, framework, reel, motor, pinch rollers, and concentric hose storage.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art not referred to are Blanc (US 2111527), Quick (US 2199651), Arnold (US 2953799), Hunt (US 3095592), and Boisture (US 5022463), who teach pipe cleaning apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah E. Husband whose telephone number is (571) 272-8387. The examiner can normally be reached on M-F 7:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEH

**MICHAEL BARR**  
**SUPERVISORY PATENT EXAMINER**

A handwritten signature in black ink, appearing to read 'Michael Barr', with a long horizontal flourish extending to the right.